

III. REMARKS

Status of the Claims

Claims 1-19 are presented for reconsideration.

In rejecting the claims, the examiner has cited, for the first time, the reference Fox as a basis for the obviousness rejections. The citation of this new reference was not necessitated by Applicant's prior amendments and accordingly the issuing of a final rejection is improper under MPEP section 706.07(c) where it is stated:

"While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant, who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application."

The Examiner is respectfully requested to reconsider the final nature of the pending office action and his rejection in view of the above amendments and the following arguments. This request is being made within 2-months of the mailing date of the Office Action.

The Office Action

Claims 1, 8-10, and 16-18 are rejected under 35USC103(a) based on the combined teaching of the reference Weatherspoon and the newly cited reference Fox, et al, U.S. Patent No. 5,943,624. This rejection is traversed on the following grounds:

The combined teaching of Weatherspoon and Fox does not render claims 1, 8-10, and 16-18 obvious because it fails to teach or otherwise

suggest each and every limitation of the claims. It is well settled that in order to establish a *prima facie* case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, without reference to the disclosure of this application. (MPEP Section 2142) ***In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).*** See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.”

Each of independent claims 1, 16, and 17 contain the following limitation from claim 1 or equivalent limitation:

“said identification means arranged to independently provide information identifying said portable communications device, from said identification means to said second device by means of a second communication link, to enable a communication connection over said first communication link between said communication means and said second device.”

The combined teaching fails to disclose or suggest this feature. In particular there is no teaching that information is sent over the second communication link in order to enable the communication over the first communication link.

The claimed subject matter relates to means for establishing a communication connection between a portable communication device and a second device, for example, a point of service device. There are two independent communications set up, one that is used for transmitting transaction information and another that is used for transmitting identification information relating to the particular portable communication device. The identification means is a separate link and may be as simple as a bar code readable by the point of sale

device. The identification means enables a separate communication connection for transmitting, for example, a transaction. The communication links are coupled to the extent that the first link will not function unless cleared by information transmitted over the second link.

The reference Weatherspoon relates to a system for obtaining access to a wired local area network through an access point. The access point is a gate through which a communication link may be established by a wireless device over an air channel. It involves only one communication link over which a first authentication message is sent to the wireless device by which the wireless device can authenticate the access point. If the access point is authenticated then a second authentication message is sent from the wireless device to the access point over the same air channel communication link. Upon authentication of the wireless device an authentication server authorizes access to the local area network over the air channel communication link (see the abstract in Weatherspoon). Clearly there is no identification means capable of establishing a second communication link to transmit identification information and thereby enable a separate first communication link.

The Examiner now cites the reference Fox indicating that it teaches a second communication link. The teaching of Fox, however, does not teach that the first and second links are coupled so that the second link is used to enable the first link. To the contrary, Fox teaches entirely separate and independent communication links. It is indicated, at column 5, lines 35-45, that the cellular connection may be used to update information on the smart card. No other function is taught relating to interaction between the links. Basically Fox provides a smart card secured within a cellular phone and having its own communication capability.

The combined teaching, therefore, fails to support the rejection based on obviousness. Since equivalent language to that indicated above is also contained in claims 16 and 17, these arguments apply equally to the rejection of claims 16 and 17. These grounds also apply equally to the rejected dependent claims, all of which, by dependency, have the limitations described in the independent claims.

Claims 2-7 stand rejected under 35USC103(a) based on the combined teaching of Weatherspoon and Fox and further in view of Hunt, US Patent No. 6,539,422. This rejection is traversed on the following grounds:

The combined teaching fails to disclose or suggest the claimed features of independent claims 1, 16 and 17, as indicated above. These grounds apply equally to the rejected dependent claims, all of which, by dependency, have the limitations described in the independent claims. The cited reference Hunt fails to remedy the deficiencies of the combined teaching of Weatherspoon and Fox.

Claims 11-15, and 19 stand rejected under 35USC103(a) based on the combined teaching of Weatherspoon and Fox and further in view of Cameron et al, US Publication No. 2003/0055735. This rejection is traversed on the following grounds:

The combined teaching fails to disclose or suggest the claimed features of independent claims 1, 16 and 17, as indicated above. These grounds apply equally to the rejected dependent claims, all of which, by dependency, have the limitations described in the independent claims. The cited reference Cameron fails to remedy the deficiencies of the combined teaching of Weatherspoon and Fox.

For all of the above reasons, it is respectfully submitted that all of the

claims now present in the application are novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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Date

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